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February 7, 2023

## VIA ECF

Hon. Brian M. Cogan  
United States District Judge  
United States District Court  
Eastern District of New York  
225 Cadman Plaza East  
Brooklyn, NY 11201

Re: Sherwood v. City of New York et, al.,  
22-CV-7505 (BMC)

Your Honor,

I represent Defendant New York City Police Officer John Madera (“Officer Madera”) in the above-referenced matter. I write to respectfully request the Court terminate Plaintiff’s pending request for a Clerk’s Certificate of Default. Counsel for all parties consent to this request.

By way of background, Plaintiff served Officer Madera with the Summons and Complaint on December 20<sup>th</sup>, 2022, by leaving the papers with a person of suitable age and discretion at the NYPD’s 84<sup>th</sup> precinct. (*see*, ECF Document #11) Officer Madera was out sick at the end of December and received the papers on January 4<sup>th</sup>, 2022 when he came back to work. On or about January 5<sup>th</sup>, 2022, Officer Madera filed his Request for Legal Assistance to the NYC Law Department. On January 5<sup>th</sup>, 2022, the NYC Law Department appeared on behalf of Defendant City of New York only, and asked for an extension of time for all Defendants to answer, which the Court denied. (*see*, ECF Document #12-13) On January 9<sup>th</sup>, 2023, the NYC Law Department filed an Answer on behalf of Defendant City of New York only. (*see*, ECF Document # 14) In anticipation of the initial status conference scheduled for January 24<sup>th</sup>, 2023, the parties filed a joint letter wherein counsel for Defendant City of New York indicated the Law Department determined it could not represent Officer Madera. (*see*, ECF Document #15 at pg. 3 FN. 1) Upon information and belief, at the January 24<sup>th</sup>, 2023, counsel for Defendant City of New York asked the Court to *sua sponte* extend Officer Madera’s time to answer which the Court declined to. Upon information and belief, at the conference the Court also invited Plaintiff to request a Clerk’s Certificate of Default, which he did the following day, January 25<sup>th</sup>, 2023. (*see*, ECF Document #19) Subsequently, the NYC Law Department advised Officer Madera, for the first time, that it was declining to represent him by sending him a letter dated January 26<sup>th</sup>, 2023. On February 3<sup>rd</sup>, 2022, the undersigned filed a Notice of Appearance and Answer with cross-claims on behalf of Officer Madera. (*see*, ECF Document #22-24)

The basis for the request is that Officer Madera's delay in answering is the result of the Law Department's delay in making a representation decision. As mentioned above, the City did not notify Officer Madera that it could not represent him until January 26<sup>th</sup>, 2023 after his deadline to answer had passed and after the initial status conference and request for a Certificate of Default. Given the timing of the representation decision, I respectfully submit that Officer Madera could not have answered before the request for a certificate of default was made. Counsel for Plaintiff has graciously consented to terminate the request now that Officer Madera has appeared and answered.

For the reasons set forth above, I respectfully request that the Court terminate Plaintiff's pending request for a Clerk's Certificate of Default. We thank the Court for its time and consideration of this matter.

Respectfully Submitted,

/s/  
Doug LaBarbera (DL 3880)

CC: **VIA ECF**

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